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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 30, 2021

Mr. Charles Maguire
Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, Texas 75270

Dear Mr. Maguire:

The Texas Commission on Environmental Quality (TCEQ) is in receipt of the U.S. Environmental Protection Agency's (EPA) letter rescinding its permit review waiver of desalination facilities and request for review of Texas Pollutant Discharge Elimination System (TPDES) Permit No. TX0138347 (WQ0005253000) for the Port of Corpus Christi of Nueces County (POCC). TCEQ is complying with the 10-day deadline by providing documents and requesting a clarification on EPA's request. Because TCEQ is providing all documents for Permit WQ0005253000 required by Section IV.C.3.a of the Memorandum of Agreement (MOA) between EPA, our understanding is that EPA's 45-day review period begins today. As for the other issues discussed in the letter, TCEQ will respond in full as soon as possible.

Documents Provided via File Transfer Protocol (FTP) Site

The following documents, if applicable, have been uploaded to TCEQ's FTP Site (see attached instructions):

2018 Application

1. Draft Permit,
2. Fact Sheet or Statement of Basis,
3. New Source determination, if applicable (not applicable; the POCC application is not a new source as defined by Title 40, Code of Federal Regulations (40 CFR) § 122.2),
4. Water quality standards variance request/response, if applicable (not applicable because the POCC did not request a variance to the water quality standards),
5. "Major" classification if applicable and the rationale for "Majors" which detail permit limit calculations,
6. Interoffice Memoranda, and
7. Communication between the Executive Director's Staff and the POCC.

2021 Amended Application

1. Draft Permit,
2. Fact Sheet or Statement of Basis,
3. New Source determination, if applicable (not applicable; the POCC application is not a new source as defined by 40 CFR § 122.2),
4. Water quality standards variance request/response, if applicable,
5. "Major" classification if applicable and the rationale for "Majors" which detail permit limit calculations,
6. Interoffice Memoranda, and
7. Communication between the Executive Director's Staff and the POCC (not applicable).

Please note that many of the requested documents are publicly available by searching TCEQ's Commissioners' Integrated Database for TCEQ Docket No. 2019-1156-IWD.¹ Additionally, documents for TPDES Permit No. TX0138347 can also be retrieved by accessing the Commissioners' Marked Agendas website.² This matter is Item 2 on the May 19, 2021 Marked Agenda.

Clarification Needed

EPA's letter requests TCEQ provide:

- The revised draft permit,
- *TCEQ's files related to POCC's original application filed in March 2018* (emphasis added),
- The proposed permit submitted to the Commissioners on May 19, 2021,
- TCEQ's response to public comments and
- The Administrative Law Judges' Proposal for Decision.

The documents TCEQ believes are responsive are included as attachments to this response, however, we request clarification regarding EPA's expectations regarding "documents in TCEQ's files related to the Port Authority's original March 2018 application . . ." Because the draft permit based on the March 2018 application was subject to a Contested Case Hearing (CCH), TCEQ's files include everything that was filed by all parties during the CCH process. These files are voluminous and may not be able to be sent electronically. Although we are providing documents from the 2018 application as noted above, TCEQ requests clarification from EPA regarding the specific documents requested from the CCH process. Additionally, because TCEQ is still in the CCH process, all information that is sent to EPA must also be disclosed to all parties to the CCH. While TCEQ is willing to provide the information, TCEQ notes that it will take a substantial amount of time to gather all the information in a format that can be transmitted, and if the response must be submitted as hard copies due to the voluminous nature, the mailing expenses incurred by TCEQ will be substantial.

If you need additional information or have any questions, please contact Ms. Shannon Gibson of my staff e-mail at Shannon.Gibson@tceq.texas.gov, by telephone at (512) 239-4284, or, if by correspondence, include "MC 148" following the permit writer's name in the letterhead address.

Sincerely,

Earl Lott

Earl Lott, Director
Office of Water
Texas Commission on Environmental Quality

¹ Visit <https://www14.tceq.texas.gov/epic/eCID/>; type "2019-1156-IWD" (without quotation marks) into the "TCEQ Docket Number:" search box; select "Search;" select "Display all Activity Actions" to access the available documents.

² https://www.tceq.texas.gov/agency/decisions/agendas/comm/markcomm_agendas.html